

AMENDED IN ASSEMBLY APRIL 4, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2359**

**Introduced by Assembly Member La Suer**

February 21, 2002

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~~An act to amend Sections 45125, 45125.01, and 45125.1 of the Education Code, relating to school employees. An act to amend Section 12307 of the Penal Code, relating to destructive devices.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2359, as amended, La Suer. ~~School employees: Social Security numbers~~ *Criminal law: destructive devices.*

~~Existing law requires the governing board of a school district to require each person to be employed in a position not requiring certification qualifications to have fingerprint cards prepared by a local public law enforcement agency, requires that agency to transmit the cards to the Department of Justice, and requires the Department of Justice to ascertain whether the applicant or employee has been arrested or convicted of any crime and to furnish all information of which it has a record and which pertains to the person whose fingerprints were transmitted. Existing law also requires the employees of any entity that has a contract with a school district to provide specified services to submit or have submitted their fingerprints to the Department of Justice if the employees are to have more than limited contact with pupils.~~

~~This bill would require the collection of Social Security numbers from persons employed or to be employed in certificated service or classified service, would require the Social Security numbers to be submitted to the Department of Justice when the fingerprint cards are~~

~~submitted, or, in the case of those persons who have previously submitted fingerprint cards to be separately submitted, and would prescribe related matters, thereby imposing a state-mandated local program.~~

*Existing law prohibits the possession of specified destructive devices and requires that any prohibited destructive device be surrendered to the Department of Justice. The department must destroy the device so as to render it unusable and unrepairable as a destructive device.*

*This bill would allow any prohibited destructive device to be surrendered to the sheriff or chief of police, as applicable, in addition to the department. The bill would require the sheriff or chief of police to destroy the device so as to render it unusable and unrepairable as a destructive device, thereby imposing a state-mandated local program.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 ~~SECTION 1. Section 45125 of the Education Code is~~

2 *SECTION 1. Section 12307 of the Penal Code is amended to*  
3 *read:*

4 12307. The possession of any destructive device in violation  
5 of this chapter shall be deemed to be a public nuisance and the  
6 Attorney General or district attorney of any city, county, or city  
7 and county may bring an action before the superior court to enjoin  
8 the possession of any ~~such~~ destructive device.

9 Any ~~such~~ destructive device found to be in violation of this  
10 chapter shall be surrendered to the Department of Justice, *or to the*  
11 *sheriff or chief of police, as applicable, and the department,*

1 *sheriff, or chief of police* shall destroy ~~such~~ *the* destructive device  
2 so as to render it unusable and unrepairable as a destructive device,  
3 except upon the filing of a certificate with the department by a  
4 judge or district attorney stating that the preservation of ~~such~~ *the*  
5 destructive device is necessary to serve the ends of justice.

6 ~~amended to read:~~

7 ~~45125. (a) (1) Except as provided in Section 45125.01, the~~  
8 ~~governing board of any school district shall require each person~~  
9 ~~employed, or to be employed in a position not requiring~~  
10 ~~certification qualifications, except a secondary school pupil~~  
11 ~~employed in a temporary or part-time position by the governing~~  
12 ~~board of the school district having jurisdiction over the school~~  
13 ~~attended by the pupil, to have two fingerprint cards bearing the~~  
14 ~~legible rolled and flat impressions of the person's fingerprints~~  
15 ~~together with a personal description of the applicant, including the~~  
16 ~~applicant's or employee's Social Security number, prepared by a~~  
17 ~~local public law enforcement agency having jurisdiction in the~~  
18 ~~area of the school district, which agency shall transmit the cards,~~  
19 ~~together with the fee required by subdivision (f), to the Department~~  
20 ~~of Justice; except that any district, or districts with a common~~  
21 ~~board, may process the fingerprint cards if the district so elects. On~~  
22 ~~and after the effective date of the act amending this section, each~~  
23 ~~person subject to the requirements of this section who has~~  
24 ~~previously submitted fingerprint cards shall separately submit his~~  
25 ~~or her Social Security number to the school district for submission~~  
26 ~~to the Department of Justice and the school district shall submit~~  
27 ~~these Social Security numbers to the Department of Justice.~~

28 ~~(2) As used in this section, "local public law enforcement~~  
29 ~~agency" includes any school district and as used in Section 45126~~  
30 ~~requires the Department of Justice to provide to any school district,~~  
31 ~~upon application, information pertaining only to applicants for~~  
32 ~~employment by the district, including applicants who are~~  
33 ~~employees of another district.~~

34 ~~(b) (1) Upon receiving the fingerprint cards or Social Security~~  
35 ~~number, the Department of Justice shall ascertain whether the~~  
36 ~~applicant or employee has been arrested or convicted of any crime~~  
37 ~~insofar as that fact can be ascertained from information available~~  
38 ~~to the department and forward the information to the employing~~  
39 ~~agency submitting the applicant's or employee's fingerprints or~~  
40 ~~Social Security number no more than 15 working days after~~

1 ~~receiving the fingerprint cards or Social Security number. The~~  
2 ~~Department of Justice shall not forward records of criminal~~  
3 ~~proceedings that did not result in a conviction but shall forward~~  
4 ~~information on arrests pending adjudication.~~

5 ~~(2) Upon implementation of an electronic fingerprinting~~  
6 ~~system with terminals located statewide and managed by the~~  
7 ~~Department of Justice, the Department of Justice shall ascertain~~  
8 ~~the information required pursuant to this subdivision within three~~  
9 ~~working days. If the Department of Justice cannot ascertain the~~  
10 ~~information required pursuant to this subdivision within three~~  
11 ~~working days, the department shall notify the school district that~~  
12 ~~it cannot so ascertain the required information. This notification~~  
13 ~~shall be delivered by telephone or electronic mail to the school~~  
14 ~~district. If a school district is notified by the Department of Justice~~  
15 ~~that it cannot ascertain the required information about an applicant~~  
16 ~~for employment, the school district may not employ that person~~  
17 ~~until the Department of Justice ascertains that information.~~

18 ~~(3) In the case of a person employed, or to be employed in a~~  
19 ~~position not requiring certification qualifications who is described~~  
20 ~~in subparagraph (A) or (B), the school district shall request the~~  
21 ~~Department of Justice to forward one copy of the fingerprint cards~~  
22 ~~and the person's social security number to the Federal Bureau of~~  
23 ~~Investigation for the purpose of obtaining any record of previous~~  
24 ~~convictions of the applicant.~~

25 ~~(A) The person has not resided in the State of California for at~~  
26 ~~least one year immediately preceding the person's application for~~  
27 ~~employment.~~

28 ~~(B) The person has resided for more than one year, but less than~~  
29 ~~seven years, in the State of California and the Department of~~  
30 ~~Justice has ascertained that the person was convicted of a sex~~  
31 ~~offense where the victim was a minor or a drug offense where an~~  
32 ~~element of the offense is either the distribution to, or the use of a~~  
33 ~~controlled substance by, a minor.~~

34 ~~(4) A school district may periodically request the information~~  
35 ~~described in subdivision (b) during an employee's course of~~  
36 ~~employment.~~

37 ~~(c) The governing board of a school district shall not employ~~  
38 ~~a person until the Department of Justice completes its check of the~~  
39 ~~state criminal history file as set forth in this section and Sections~~  
40 ~~45125.5 and 45126, except that this subdivision does not apply to~~

1 secondary school pupils who are to be employed in a temporary or  
2 part-time position by the governing board of the school district  
3 having jurisdiction over the school they attend.

4 (d) The governing board of each district shall maintain a list  
5 indicating the number of current employees, except secondary  
6 school pupils employed in a temporary or part-time position by the  
7 governing board of the school district having jurisdiction over the  
8 school they attend, who have not completed the requirements of  
9 this section. The Department of Justice shall process these cards  
10 within 30 working days of their receipt and any cards in its  
11 possession on the date of the amendment of this section by  
12 Assembly Bill 1610 of the 1997-98 Regular Session within 30  
13 working days of that date.

14 (e) A plea or verdict of guilty or a finding of guilt by a court in  
15 a trial without a jury or forfeiture of bail is deemed to be a  
16 conviction within the meaning of this section, irrespective of a  
17 subsequent order under the provisions of Section 1203.4 of the  
18 Penal Code allowing the withdrawal of the plea of guilty and  
19 entering of a plea of not guilty, or setting aside the verdict of guilty,  
20 or dismissing the accusations or information.

21 (f) (1) The school district shall provide the means whereby the  
22 fingerprint cards may be completed and Social Security numbers  
23 collected and may charge a fee determined by the Department of  
24 Justice to be sufficient to reimburse the department for the costs  
25 incurred in processing the application. The amount of the fee shall  
26 be forwarded to the Department of Justice with the required copies  
27 of applicant's fingerprint cards. The Department of Justice shall  
28 charge a reduced fee when receiving and processing only Social  
29 Security numbers for those persons who have previously  
30 submitted fingerprint cards. The governing board may collect a  
31 reasonable fee payable to the local public law enforcement agency  
32 taking the fingerprints and completing the data on the fingerprint  
33 cards. In no event shall the fee exceed the actual costs incurred by  
34 the agency.

35 (2) The additional fees shall be transmitted to the city or county  
36 treasury. If an applicant is subsequently hired by the board within  
37 30 days of the application, the fee may be reimbursed to the  
38 applicant. Funds not reimbursed to applicants shall be credited to  
39 the general fund of the district. If the fingerprint cards forwarded  
40 to the Department of Justice are those of a person already in the

1 ~~employ of the governing board, the district shall pay the fee~~  
2 ~~required by this section, which fee shall be a proper charge against~~  
3 ~~the general fund of the district, and no fee shall be charged the~~  
4 ~~employee.~~

5 ~~(g) This section applies to substitute and temporary employees~~  
6 ~~regardless of length of employment.~~

7 ~~(h) Subdivision (c) of this section shall not apply to a person to~~  
8 ~~be employed if a school district determines that an emergency or~~  
9 ~~an exceptional situation exists, and that a delay in filling the~~  
10 ~~position in which the person would be employed would endanger~~  
11 ~~pupil health or safety.~~

12 ~~(i) Where reasonable access to the statewide, electronic~~  
13 ~~fingerprinting network is available, the Department of Justice may~~  
14 ~~mandate electronic submission of the fingerprints and related~~  
15 ~~information required by this section.~~

16 ~~(j) A school district shall request subsequent arrest service~~  
17 ~~from the Department of Justice as provided under Section 11105.2~~  
18 ~~of the Penal Code.~~

19 ~~(k) All information obtained from the Department of Justice is~~  
20 ~~confidential. Each agency handling Department of Justice~~  
21 ~~information shall ensure the following:~~

22 ~~(1) No recipient may disclose its contents or provide copies of~~  
23 ~~information.~~

24 ~~(2) Information received shall be stored in a locked file~~  
25 ~~separate from other files, and shall only be accessible to the~~  
26 ~~custodian of records.~~

27 ~~(3) Information received shall be destroyed upon the hiring~~  
28 ~~determination in accordance with subdivision (a) of Section 708~~  
29 ~~of Title 11 of the California Code of Regulations.~~

30 ~~(4) Compliance with destruction, storage, dissemination,~~  
31 ~~auditing, backgrounding, and training requirements as set forth in~~  
32 ~~Sections 700 through 708, inclusive, of Title 11 of the California~~  
33 ~~Code of Regulations and Section 11077 of the Penal Code~~  
34 ~~governing the use and security of criminal offender record~~  
35 ~~information is the responsibility of the entity receiving the~~  
36 ~~information from the Department of Justice.~~

37 ~~(l) Notwithstanding any other provision of law, the Department~~  
38 ~~of Justice shall process pursuant to this section all requests from~~  
39 ~~a school district, an employer, or a human resource agency for~~  
40 ~~criminal history information on a volunteer to be used in a school.~~

1     ~~SEC. 2.—Section 45125.01 of the Education Code is amended~~  
2     ~~to read:~~

3     ~~45125.01.—(a) For situations in which a person is an applicant~~  
4     ~~for employment, or is employed on a part-time or substitute basis,~~  
5     ~~in a position not requiring certification qualifications in multiple~~  
6     ~~school districts within a county or within contiguous counties, the~~  
7     ~~districts may agree among themselves to designate a single district,~~  
8     ~~or a county superintendent may agree to act on behalf of~~  
9     ~~participating districts within the county or contiguous counties, for~~  
10    ~~the purposes of performing the following duties:~~

11    ~~(1) Sending fingerprints and Social Security numbers to the~~  
12    ~~Department of Justice.~~

13    ~~(2) Receiving reports of convictions of serious and violent~~  
14    ~~felonies, criminal history records and reports of subsequent arrests~~  
15    ~~from the Department of Justice.~~

16    ~~(3) Maintaining common lists of persons eligible for~~  
17    ~~employment.~~

18    ~~(b) The school district or county superintendent serving in the~~  
19    ~~capacity authorized in subdivision (a) shall be considered the~~  
20    ~~employer for purposes of subdivisions (a) and (f) of Section~~  
21    ~~45125.~~

22    ~~(c) Upon receipt from the Department of Justice of a report of~~  
23    ~~conviction of a serious or violent felony, the designated school~~  
24    ~~district or county superintendent shall communicate that fact to the~~  
25    ~~participating districts and remove the affected employee from the~~  
26    ~~common list of persons eligible for employment.~~

27    ~~(d) Upon receipt from the Department of Justice of a criminal~~  
28    ~~history record or report of subsequent arrest for any person on a~~  
29    ~~common list of persons eligible for employment, the designated~~  
30    ~~school district or county superintendent shall give notice to the~~  
31    ~~superintendent of any participating district or a person designated~~  
32    ~~in writing by that superintendent, that the report is available for~~  
33    ~~inspection on a confidential basis by the superintendent or~~  
34    ~~authorized designee, at the office of the designated school district~~  
35    ~~or county superintendent, for a period of 30 days following receipt~~  
36    ~~of notice to enable the employing school district to determine~~  
37    ~~whether the employee meets that district's criteria for continued~~  
38    ~~employment. The designated school district or county~~  
39    ~~superintendent shall not release a copy of that information to any~~  
40    ~~participating district or any other person, shall retain or dispose of~~



~~the information in the manner required by law after all participating districts have had an opportunity to inspect it in accordance with this section, and shall maintain a record of all persons to whom the information has been shown that shall be available to the Department of Justice to monitor compliance with the requirements of confidentiality contained in this section.~~

~~(e) Any agency processing Department of Justice responses pursuant to this section shall submit an interagency agreement to the Department of Justice to establish authorization to submit and receive information pursuant to this section.~~

~~(f) All information obtained from the Department of Justice is confidential. Every agency handling Department of Justice information shall ensure the following:~~

~~(1) No recipient may disclose its contents or provide copies of information.~~

~~(2) Information received shall be stored in a locked file separate from other files, and shall only be accessible to the custodian of records.~~

~~(3) Information received shall be destroyed upon the hiring determination in accordance with subdivision (a) of Section 708 of Title 11 of the California Code of Regulations.~~

~~(4) Compliance with destruction, storage, dissemination, auditing, backgrounding, and training requirements as set forth in Sections 700 through 708, inclusive, of Title 11 of the California Code of Regulations and Section 11077 of the Penal Code governing the use and security of criminal offender record information is the responsibility of the entity receiving the information from the Department of Justice.~~

~~SEC. 3. Section 45125.1 of the Education Code is amended to read:~~

~~45125.1. (a) Except as provided in subdivisions (b) and (c), if the employees of any entity that has a contract with a school district, as defined in Section 41302.5, to provide any of the following services may have any contact with pupils, those employees shall submit or have submitted their fingerprints in a manner authorized by the Department of Justice together with their Social Security numbers and a fee determined by the Department of Justice to be sufficient to reimburse the department for its costs incurred in processing the application:~~

~~(1) School and classroom janitorial.~~



1 ~~(2) Schoolsite administrative.~~

2 ~~(3) Schoolsite grounds and landscape maintenance.~~

3 ~~(4) Pupil transportation.~~

4 ~~(5) Schoolsite food-related.~~

5 ~~(b) This section shall not apply to an entity providing any of the~~  
6 ~~services listed in subdivision (a) to a school district in an~~  
7 ~~emergency or exceptional situation, such as when pupil health or~~  
8 ~~safety is endangered or when repairs are needed to make school~~  
9 ~~facilities safe and habitable.~~

10 ~~(c) This section shall not apply to an entity providing any of the~~  
11 ~~services listed in subdivision (a) to a school district when the~~  
12 ~~school district determines that the employees of the entity will~~  
13 ~~have limited contact with pupils. In determining whether a~~  
14 ~~contract employee has limited contact with pupils, the school~~  
15 ~~district shall consider the totality of the circumstances, including~~  
16 ~~factors such as the length of time the contractors will be on school~~  
17 ~~grounds, whether pupils will be in proximity with the site where~~  
18 ~~the contractors will be working, and whether the contractors will~~  
19 ~~be working by themselves or with others. If a school district has~~  
20 ~~made this determination, the school district shall take appropriate~~  
21 ~~steps to protect the safety of any pupils that may come in contact~~  
22 ~~with these employees.~~

23 ~~(d) A school district may determine, on a case-by-case basis, to~~  
24 ~~require an entity providing schoolsite services other than those~~  
25 ~~listed in subdivision (a) or those described in Section 45125.2 and~~  
26 ~~the entity's employees to comply with the requirements of this~~  
27 ~~section, unless the school district determines that the employees of~~  
28 ~~the entity will have limited contact with pupils. In determining~~  
29 ~~whether a contract employee will have limited contact with pupils,~~  
30 ~~the school district shall consider the totality of the circumstances,~~  
31 ~~including factors such as the length of time the contractors will be~~  
32 ~~on school grounds, whether pupils will be in proximity with the~~  
33 ~~site where the contractors will be working, and whether the~~  
34 ~~contractors will be working by themselves or with others. If a~~  
35 ~~school district makes this determination, the school district shall~~  
36 ~~take appropriate steps to protect the safety of any pupils that may~~  
37 ~~come in contact with these employees. If a school district requires~~  
38 ~~an entity providing services other than those listed in subdivision~~  
39 ~~(a) and its employees to comply with the requirements of this~~  
40 ~~section, the Department of Justice shall comply with subdivision.~~

~~(c) (1) The Department of Justice shall ascertain whether the individual whose fingerprints and Social Security number were submitted to it pursuant to subdivision (a) has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the department. Upon implementation of an electronic fingerprinting system with terminals located statewide and managed by the Department of Justice, the department shall ascertain the information required pursuant to this section within three working days. When the Department of Justice ascertains that an individual whose fingerprints were submitted to it pursuant to subdivision (a) has a pending criminal proceeding for a felony as defined in Section 45122.1 or has been convicted of a felony as defined in Section 45122.1, the department shall notify the employer designated by the individual of that fact. The notification shall be delivered by telephone or electronic mail to the employer.~~

~~(2) The Department of Justice, at its discretion, may notify the school district in instances when the employee is defined as having a pending criminal proceeding described in Section 45122.1 or has been convicted of a felony as defined in Section 45122.1.~~

~~(3) The Department of Justice may forward one copy of the fingerprints and the person's Social Security number to the Federal Bureau of Investigation to verify any record of previous arrests or convictions of the applicant. The Department of Justice shall review the criminal record summary it obtains from the Federal Bureau of Investigation and shall notify the employer only as to whether or not an applicant has any convictions or arrests pending adjudication for offenses which, if committed in California, would have been punishable as a violent or serious felony. The Department of Justice shall not provide any specific offense information received from the Federal Bureau of Investigation. The Department of Justice shall provide written notification to the contract employer only concerning whether an applicant for employment has any conviction or arrest pending final adjudication for any of those crimes, as specified in Section 45122.1, but shall not provide any information identifying any offense for which an existing employee was convicted or has an arrest pending final adjudication.~~

~~(f) An entity having a contract as specified in subdivision (a) and an entity required to comply with this section pursuant to~~

1 ~~subdivision (d) shall not permit an employee to come in contact~~  
2 ~~with pupils until the Department of Justice has ascertained that the~~  
3 ~~employee has not been convicted of a felony as defined in Section~~  
4 ~~45122.1.~~

5 ~~(1) This prohibition does not apply to an employee solely on the~~  
6 ~~basis that the employee has been convicted of a felony if the~~  
7 ~~employee has obtained a certificate of rehabilitation and pardon~~  
8 ~~pursuant to Chapter 3.5 (commencing with Section 4852.01) of~~  
9 ~~Title 6 of Part 3 of the Penal Code.~~

10 ~~(2) This prohibition does not apply to an employee solely on the~~  
11 ~~basis that the employee has been convicted of a serious felony that~~  
12 ~~is not also a violent felony if that employee can prove to the~~  
13 ~~sentencing court of the offense in question, by clear and~~  
14 ~~convincing evidence, that he or she has been rehabilitated for the~~  
15 ~~purposes of schoolsite employment for at least one year. If the~~  
16 ~~offense in question occurred outside this state, then the person may~~  
17 ~~seek a finding of rehabilitation from the court in the school district~~  
18 ~~in which he or she is resident.~~

19 ~~(g) An entity having a contract as specified in subdivision (a)~~  
20 ~~and an entity required to comply with this section pursuant to~~  
21 ~~subdivision (d) shall certify in writing to the school district that~~  
22 ~~neither the employer nor any of its employees who are required by~~  
23 ~~this section to submit or have their fingerprints and social security~~  
24 ~~numbers submitted to the Department of Justice and who may~~  
25 ~~come in contact with pupils have been convicted of a felony as~~  
26 ~~defined in Section 45122.1.~~

27 ~~(h) An entity having a contract as specified in subdivision (a)~~  
28 ~~on the effective date of this section and an entity required to~~  
29 ~~comply with this section pursuant to subdivision (d) by a school~~  
30 ~~district with which it has a contract on the effective date of the~~  
31 ~~amendments made to this section during the 1997-98 Regular~~  
32 ~~Session shall complete the requirements of this section within 90~~  
33 ~~days of that date.~~

34 ~~(i) For purposes of this section, a charter school shall be~~  
35 ~~deemed to be a school district.~~

36 ~~(j) Where reasonable access to the statewide electronic~~  
37 ~~fingerprinting network is available, the Department of Justice may~~  
38 ~~mandate electronic submission of the fingerprint cards and other~~  
39 ~~information required by this section.~~

40 ~~SEC. 4.~~

1     *SEC. 2.* Notwithstanding Section 17610 of the Government  
2     Code, if the Commission on State Mandates determines that this  
3     act contains costs mandated by the state, reimbursement to local  
4     agencies and school districts for those costs shall be made pursuant  
5     to Part 7 (commencing with Section 17500) of Division 4 of Title  
6     2 of the Government Code. If the statewide cost of the claim for  
7     reimbursement does not exceed one million dollars (\$1,000,000),  
8     reimbursement shall be made from the State Mandates Claims  
9     Fund.

